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Raised Bill No. 5531 – *An Act Concerning the Care and Treatment of Persons with a  
Mental Illness or Substance Use Disorder*  
Judiciary Public Hearing – March 18, 2016

The Connecticut Criminal Defense Lawyers Associations is a not-for-profit organization of more than three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

CCDLA opposes Raised Bill 5531. The proposed legislation tramples the constitutional rights of individuals suffering from mental illness or substance abuse disorders by depriving them of their right to privacy, right to bodily integrity and right to be free from unwanted governmental intrusion.<sup>1</sup> It also ignores constitutional guarantees to Due Process contained in the Fourteenth Amendment to the United States Constitution.

“No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” Cruzan v. Director, Missouri Department of Health, 110 S.Ct.2841 (1990) quoting Union Pacific R. Co. v. Botsford, 11 S.Ct. 1000, 1001 (1891). No person shall “be deprived of life, liberty, or property, without the due process of law.” U.S. Const. amend. V; U.S. Const. amend. XIV. The idea that people are allowed to choose what to do with their body is ingrained in the Due Process Clause and the Constitutional right to privacy.

The right to refuse medical treatment is protected by the idea of substantive due process. “[T]he common-law doctrine of informed consent is viewed as generally encompassing the right of a competent individual to refuse medical treatment.” Cruzan, 110 S.Ct. at 2851. “[A] competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment.” Id. This means that the right for a competent person to refuse medical treatment qualifies for heightened judicial protections. A court must apply a “strict scrutiny” standard in assessing the constitutionality of a bill such as this. In order to pass constitutional muster, this legislation must be necessary to achieve a compelling state interest. This standard cannot be met.

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<sup>1</sup> See Winick, Bruce. *The Right to Refuse Mental Health Treatment*, American Psychological Association, 1997.

To pass strict scrutiny analysis, the legislature's means must be narrowly tailored and necessary to further a compelling state interest. Judging from past cases dealing with bodily autonomy state interests have been classified as preventing suicide as well as protecting and preserving human life. This bill is not narrowly tailored and necessary to further these interests. First, this is not necessary because there are other bills in place to protect people who are gravely disabled or a danger to themselves or others. Conn. Gen. Stat. §17a-502. Second, this bill is in no way narrowly tailored. The bill allows medical treatment to be forced upon *competent* individuals, who are "*capable* of giving informed consent," despite the fact that competent people have the constitutional right to refuse *any* medical treatment, even lifesaving medical treatment. Cruzan at 2852.

There is no state interest that justifies this severe infringement on personal rights. Fear of mental illness cannot justify this proposed legislation. It is important to remember that "[m]ere public intolerance or animosity cannot constitutionally justify the deprivation of a person's physical liberty." O'Connor v. Donaldson, 422 US 563, 575 (1975). There is no state interest compelling enough to justify infringing on one of the most important fundamental rights, the right of a competent person to refuse medical treatment.

The proposed legislation seeks to allow the forced medication of individuals who are capable of providing informed consent but are refusing to be medicated despite a doctor's orders. It will allow the appointment of a Conservator by the Probate Court who will have the authority to consent to the medicating of the individual against their will. The proposed legislation further provides that the Conservator may seek the assistance of police and emergency medical personnel in bringing the individual to a facility for the forced administration of the medications. This conduct is a step backwards for our mental health system in this state and has great potential for abuse.

The proposed legislation, while it may be well intentioned, lacks necessary due process protections for those who may be subjected to forced medications. It completely ignores their rights to privacy, bodily integrity, and freedom from governmental intrusion.

The proposed legislation also raises certain practical concerns as it lacks necessary details and is overly broad. For instance, how will a Conservator determine that the individual is not taking their medications? Will he or she be able to force the individual to submit to blood or urine testing to determine if the levels of the medication are consistent with taking the appropriate dosage? Such forced testing would constitute another infringement on the individual's constitutionally protected rights. Can the Conservator force the individual to take the medication in their presence or does it need to occur only at a specific location or facility? It is extremely problematic that the proposed legislation is not clear on these issues.

Another practical problem is the involvement of law enforcement and emergency medical personnel in the forced medicating of individuals. The proposed legislation authorizes the Conservator to enlist law enforcement assistance in transporting the individual to a "designated location for the administration of medication." What exactly does this mean? Will there be places established where we will now force the mentally ill to take medications against their will? If this is intended to mean a medical treatment facility, will this result in unnecessary emergency room visits? If so, this has potential to further burden the state's already strained emergency departments. This bill is unclear as to what this means. Whatever is intended, it is not acceptable to think that the police will not be used to assist in forcing medications on people who do not want them.

The use of law enforcement also raises the possibility that the individual who is being forced to medicate, while already suffering from mental health or substance abuse illness, will resist and be faced with the very real possibility of being charged with interfering with an officer or assaulting an officer or emergency medical personnel as a result of their unwillingness to be medicated. This type of unnecessary and unwanted government intrusion into the lives of Connecticut residents is completely inappropriate and likely unconstitutional.

Additionally, this bill ignores the fact that not all mental health conditions can be cured with medications. In fact, there are numerous mental health medications that can have adverse side effects on the people who take them. The reality is that these medications do not cure all conditions and sometimes even make conditions worse. It can take weeks, months, or even years before the proper treatment can be found which will effectively treat certain conditions. The proposed legislation ignores this reality.

Finally, the proposed legislation only targets those suffering from mental health or substance abuse issues. It does not address any wide range of illnesses or conditions people suffer from and refuse to treat. Surely there are any number of conditions that left untreated, can pose a risk of harm to the individual or those around them. This legislation unfairly discriminates against the mentally ill and those suffering from substance abuse disorders.

This legislation symbolizes a tremendous infringement on rights guaranteed to individuals by the United States Constitution. Due Process is an essential part of our criminal justice system and must be afforded to individuals prior to the taking fundamental constitutional rights such as the right to privacy. While this may be a well intentioned piece of legislation it tramples individual constitutional rights. Therefore, the Connecticut Criminal Defense Lawyers Association requests the Committee to take no action on this bill.